



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

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DECISION OF THE BOARD

Mailed and Filed: OCTOBER 20, 2022

IN THE MATTER OF:

Appeal Board No. 624264

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective November 19, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by THE MOUNT SINAI HOSPITAL prior to November 19, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed June 22, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a patient financial services supervisor at a hospital for approximately 14 years until November 4, 2021. On June 2, 2021, the claimant was informed by his manager via email that he needs to be professional in his correspondence. The claimant received an email from his manager on September 16, 2021 informing him to tone down his correspondence when addressing MDs in an unprofessional and confrontational manner. The claimant received a performance evaluation on October 28, 2021 in which he was informed that he must work on developing and improving communication skills and temperament, as he often comes off as abrasive, confrontational and agitated; and that he must refrain from getting into a

shouting match in communication and remain professional at all times or disciplinary action will follow up to and including termination.

On November 2, 2021, the claimant was assigned to the task of getting authorization from an insurance carrier for services rendered to a patient. The claimant experienced difficulty in obtaining the required authorization, and the manager asked another supervisor to assist the claimant in completing the task. The claimant sent emails to his manager in frustration, and his manager responded by approaching the claimant's desk and informing him, in a normal tone of voice, to please stop sending emails as they are counterproductive. The claimant responded by directing multiple vulgarities towards his manager, which included telling his manager to go "f- himself" and "to get the f- away from his desk". The manager responded that the claimant was unprofessional, insubordinate and nothing but a "street thug". As a result, the claimant was escorted from the building and discharged.

OPINION: The credible evidence establishes that the claimant was discharged because he behaved in an insubordinate manner towards his manager on November 2, 2021, telling the manager to go "f- himself" and to "get the f- away from his desk". While the claimant was on notice that he was not to behave in a confrontational manner and that he was to act professionally at all times, we note that in general, no policy against or warning for insubordination is required for insubordinate conduct to rise to the level of misconduct for unemployment insurance purposes.

We reject the claimant's contention that his manager approached in a hostile and threatening way, and that he called the claimant a "street kid", thus prompting the claimant's response of the use of vulgarity towards his manager. We instead, accept as credible, the testimony of the claimant's manager that he went to the claimant's desk and told him in a normal tone of voice to please stop sending counterproductive and confrontational emails, but was met with vulgarity and the directive to get away from the claimant's desk, after which he called the claimant a "street thug" and escorted him from the building. In reaching this conclusion, we note the inconsistencies in the claimant's testimony as to the use of cursing and profanity by the claimant's manager during the incident, and the number of times that the claimant used vulgar language towards his manager, thus undermining the claimant's credibility. Under the circumstances, the claimant's actions rose to the level of misconduct within the meaning of the Unemployment Insurance Law and he is disqualified from the receipt of benefits effective November 19, 2021.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective November 19, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to November 19, 2021 cannot be used toward the establishment of a claim for benefits, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER